

July 31, 2003  
USSN. 09/334,891  
Examiner: PATTERSON, Marc C  
Group A.U.: 1772

**Remarks**

The Examiner's comments and objections and the cited references have been carefully considered by the Applicant.

**Claim Rejection – 35 USC § 112**

Claims 16, 17, 18, 25 and 36 are rejected under 35 USC § 112.

Claims 16, 17, 18, 25 and 36 are amended as follows;

In claim 16, "a multi-layer polyester material in which the polyester resin forming the layers of the multilayer material is an aromatic polyester resin" is changed to "a multi-layer material the layers of which are made of an aromatic polyester resin" (support on Summary of the Invention and page 6, third paragraph).

In claim 16, "the container being obtained by ... or said material" is replaced by "and the material comprises crease lines".

In claim 17, "the closure is realized by heat sealing ... the foamed sheet" is replaced by "the closure is realized by heat sealing" (support on page 3, lns. 12 – 16).

In claim 18, "material capable of conferring" is changed to "material which confers".

In claim 36, is made an amendment similar with that of claim 16 for the part of the polyester resin forming the layers.

Currently amended claims 16, 17, 18, 25 and 36 overcome the Examiner's objections. Withdrawal of the rejection is requested.

**Claim Rejection – 35 USC § 103**

It is noted that, inter alia, independent claims 16 and 36 are rejected under 35 USC § 103 as being unpatentable over Colombo in view of Hajashi.

July 31, 2003  
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According to the Examiner's reconstruction, the container disclosed by Colombo would differ from that of the claims only for the density of the polyester foamed layer.

Applicants do not agree with the reconstruction made by the Examiner because hindsight reconstruction is made to remedy the deficiencies of the Colombo disclosure.

It is submitted that the differences between the subject matter of currently amended independent claims 16 and 36 and the prior art are such that the subject matter of these claims would not have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Particularly, it should be noted that the Colombo's container is microvawable and is formed of two components: an outer shell made of a first polymeric material capable of being handled, hinged to an inner shell made of a second polymeric material capable of sustaining high temperatures and rotably folding about the hinge in such a way that it is arranged in substantially spaced relation to the other shell (Col. 1, line 60 to line 3 of Col. 2) to minimize the area of contact between the two shells (Col. 2, lines 44-47). The material of the first shell which is rigid enough to support the weight of the foodstuff is polystyrene, oriented polystyrene, PVC. Foamed polystyrene is mentioned (col. 3, lines 54 - 60), but no mention at all is made of any other foamed material, particularly foamed aromatic polyester.

The inner shell is made of any microvawable heat resistant material: preferably crystallized polyester, polypropylene, high melt strenght polypropylene including foamed or solid sheets thereof (Col. 4, lns. 8 - 26).

The thickness of each of the two shell is of about 15 - 25 mils (Col. 5, lns. 18 - 25).

The hinge connecting portions of the outer and inner shells in a continuous plastic member formed of a portion of the outer shell, heat scalable to the portion extending from the inner shell.

The inner and outer shells can be easily separated for cleaning, reuse and separated recycling operations.

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The separation and recycling cannot be realized as Colombo points out when different polymers are coextruded, laminated or otherwise permanently bonded (Col. 5, lns. 35 – 43).

In the case of the claimed containers wherein the foamed sheet is permeantly bonded to the heat-sealable film, the recycling is possible only because the two structural elements are made of the same material.

To summarize, from the foregoing the following differences can be evidenced between the claimed container and that disclosed by Colombo.

The claimed container which is not microwavable (the low melting point polyester film adhered to the foamed polyester sheet does not permit microwaving), in its simplest embodiments is made of a foamed aromatic polyester sheet to which a heat-sealable low melting point polyester film is adhered (by lamination or gluing). The container is recyclable because it is made of the same material.

In the Colombo's container, the recyclability is possible when the two shells forming the container are made of different polymers because the shells are not permanently bonded each other i.e. can be easily (mechanically or manually) separated.

No foamed polyester shell or sheet is used in Colombo container: when a foamed material is mentioned this is exclusively foamed polystyrene.

No film, particularly heat-sealable film is adhered to the other shell of the containers, on the contrary, a sheet (15 – 20 mils of thickness) of a crystallized polyester is arranged in a spaced relation to minimize the area of contact with the outer shell.

It follows that the claimed container and that disclosed by Colombo are essentially different by functionality, structural configuration and construction material.

It is accordingly submitted that independent claims 16 and 36 are in allowable condition as well as the remaining claims depending thereon and adding further limitations thereto.

Independent claims 16 and 36, as well as dependent claims 17, 23-24, 29-33, 35 and 37 are rejected under 35 USC § 103(a) as being unpatentable over Colombo in view of

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Hayashi. To establish obviousness, however, the Examiner must proffer an objective showing that would lead the one of ordinary skill to the claimed subject matter.

Here, the Examiner has not identified any objective suggestion in the cited art to modify Colombo's container as required by the claims.

In view of the above, the Applicants request that the Examiner withdraw the rejection of claims under section 103(a).

In view of the foregoing, favourable action on the merits, including entry and approval of all amendments, reconsideration and withdrawal of each rejection and allowance of all claims is respectfully solicited.

Respectfully submitted,



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